



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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September 23, 1997
AO-97-18

Edward F. Cahill, Treasurer
William J. Cahill, Jr. Committee
14 Ancient Rubbly Way
Beverly, MA 01915

Re: Contribution to the Beverly Technology Fund

Dear Mr. Cahill:

This letter is in response to your August 27, 1997 request for an advisory opinion.

You have stated that the William J. Cahill, Jr. Committee was established to support William Cahill in his campaign for the Ward Six seat on the Beverly School Committee. The Committee raised money earlier this year with the expectation that the candidate would face an opponent in the fall election. Now that the deadline for filing nomination papers has passed, it appears certain that the candidate will be running unopposed in this year's election. Because of this, the Committee expects to spend less money on campaign-related expenses than planned.

The Candidate would like to contribute \$500.00 of Committee funds to the Beverly Technology Fund, a nonprofit charitable organization whose purpose is to raise money to fund the purchase of computers and related technology for the Beverly Public Schools. From January 1, 1997 to the date of your letter, the Committee received \$2,170 in contributions, and made expenditures of \$1,078.30. You expect the Committee to spend at least another \$500.00 before the November election.

You have reviewed two OCPF advisory opinions stating that a political committee may make charitable contributions only if such contributions are "incidental" in comparison to the total annual expenditures of the committee. Most recently, in AO-94-20, the office stated that charitable contributions greater than 10% of total annual expenditures would not be considered "incidental."

With annual expenditures during 1997 of approximately \$1,600, a charitable contribution of \$500 would exceed 10% of the Committee's expenditures.

Question

Does the campaign finance law allow the Committee to make the proposed charitable contribution, even if it is more than 10% of total annual expenditures?

Answer

Yes, if the Committee complies with all requirements of M.G.L. c. 55, s. 6 and 970 CMR 2.06(3)(a). **A committee may, if it complies with these requirements, make charitable contributions without regard to the size of such contributions.**

Discussion

M.G.L. c. 55, s. 6 provides, in part, that political committees organized on behalf of candidates for municipal office:

may receive, pay and expend money or other things of **value for the enhancement of the political future of the candidate . . .**, for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures . . . [emphasis added].

Expenditures designed to enhance a candidate's political future, in addition to not being for "personal use," must also bear a reasonable connection to the candidate's nomination or election to office. See M.G.L. c. 55, s. 1 and AO-94-20. Pursuant to M.G.L. c. 55, ss. 3 and 6, the office has issued regulations to define expenditures which may be made by political committees.

A political committee may make charitable contributions only if the following requirements, as set forth in 970 C.M.R 2.06(3)(a), are met:¹

1. The contribution is made to a charitable, religious, or non-profit entity subject to either M.G.L. c. 12, section 8(f), M.G.L. c. 67 or M.G.L. c. 180, i.e., if a charitable foundation, it must be registered with the Attorney General's Division of Public Charities.

2. Neither the candidate, treasurer nor any other officer of the committee may be a trustee, officer, principal or beneficiary or involved in any manner in the operations of the entity to which the contribution is made.

3. Neither the candidate, treasurer nor any other officer of the committee may be related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity.

¹ Charitable contributions by political committees organized on behalf of constitutional candidates are governed by a similar regulation: 970 CMR 2.05(2)(w). The latter provision states, in subparagraph 5, that such committees must receive publicity and foster political goodwill "towards the particular campaign during which the contribution is made" as a result of making the contribution.

4. It is the usual and customary practice of the political committee to make such charitable contributions.

5. The political committee will receive publicity and foster political goodwill as a result of making the contribution.

OCPF has historically restricted the size of charitable gifts because of restrictive limits on charitable giving that were once placed on dissolving political committees.² Originally, the "residual funds clause" (now found in the 15th paragraph of section 18 of chapter 55) did not allow political committees to dispose of residual funds by making contributions to charitable entities. When a committee dissolved, funds remaining in a political committee's account had to be donated to the Commonwealth's Local Aid Fund or Categorical Grants Fund. The office interpreted section 6, therefore, to limit charitable contributions in a manner consistent with the residual funds clause, i.e., in a manner which would prevent committees from avoiding the restrictions of the residual funds clause by making large contributions to charitable entities.

In 1991, however, the Legislature expanded the clause to allow charitable contributions to be made upon dissolution. See Section 2 of Chapter 175 of the Acts of 1991. In addition, neither section 6 nor the regulations limit charitable contributions to a "reasonable value," an "insubstantial portion" or a specific "incidental" amount. In light of the change to section 18, and the absence of any language in section 6 or the regulations which would limit charitable contributions to an "incidental" amount, advisory opinions 83-16, 86-19, 88-31 and 94-20 are overruled to the extent they limit charitable contributions to an "incidental" or similar amount of total expenditures. We conclude, therefore, that a charitable contribution which enhances the political future of a candidate and is not made primarily for anyone's personal use may be made **regardless of the amount of the contribution.**

As noted above charitable contributions are governed by the restrictions specified in 970 CMR 2.06(3)(a)³. We believe that compliance with this regulation will assure that contributions are made to enhance the political future of a candidate and are not made primarily for any person's personal use. Although a charitable contribution which is of substantial size warrants special diligence on the part of a committee to ensure compliance, the size of a contribution, by itself, does not necessarily mean that the contribution does or does not comply with the statute or regulation.

² See AO-83-14 (charitable contributions must be of "reasonable value"); AO-86-19 (expenditures to one particular charity must not exceed \$5,000 in a calendar year and total charitable contributions must not result in a "substantial portion" of committee funds being used to support charitable entities); AO-88-31 (charitable contributions should not exceed 50% of total expenditures); AO-94-20 (charitable contributions should not exceed 10% of total annual expenditures.)

³ 970 CMR 2.05(2)(w), applicable to constitutional candidates, also does not restrict the size of charitable contributions.


Edward F. Cahill
September 23, 1997
Page 4

For the reasons stated above, the contribution to the Beverly Technology Fund would comply with the campaign finance law.

This opinion is issued within the context of the campaign finance law and on the basis of representations in your letter.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan". The signature is written in a cursive style with a large, stylized "M" and "S".

Michael J. Sullivan
Director